

Ex. Doc. No. 9.

HOUSE OF REPRESENTATIVES.

THOMAS H. NOBLE.

LETTER

FROM THE

THIRD AUDITOR OF THE TREASURY,

RELATIVE

To the claim of Thomas H. Noble.

DECEMBER 14, 1847.

Read and referred to the Committee of Claims.

TREASURY DEPARTMENT,
Third Auditor's Office, December 10, 1847.

SIR: The Secretary of the Treasury referred to this office, "for report," a copy of the following resolution of the House of Representatives of the 1st March, 1847:

"*Resolved*, That the Senate bill, No. 98, for the relief of Thomas H. Noble, and accompanying papers, be referred to the Secretary of the Treasury, with instructions to direct the proper accounting officer to report to this House, on the second Monday in December next, all the facts pertaining to the case which are in possession of the Treasury Department."

The papers directed to be sent with the resolution did not accompany it, but upon application were received from the files of the office of the Secretary of the Senate, and are as follows:

1. The petition of Thomas H. Noble.
2. "An abstract in the case."
3. Affidavit of Thomas H. Noble.
4. Affidavits of John Boulwar and Andrew Baker.

From these papers it would appear that a contract had been entered into, in the year 1838, between Captain Thomas Swords, then quartermaster at Fort Leavenworth, and the petitioner, for the de-

livery of 3,000 bushels of charcoal at that post; that a part thereof, about 1,900 bushels, had been delivered; and it is alleged that payment for the quantity delivered had been refused by Quartermaster Swords, and the contract declared by him to be closed.

As the facts in the case in possession of the Treasury Department, it was believed, could only be ascertained from the accounts and returns of Quartermaster Swords, on file in this office, a careful examination thereof was made; they were found to afford no evidence in relation to the contract, nor of the delivery of any charcoal by Thomas H. Noble, at Fort Leavenworth; nor does it appear that any charcoal had been procured for that post, by purchase or otherwise, subsequent to the 30th of September, 1837, to the year 1839.

In reply to a letter addressed to the quartermaster general, I was referred to the office of the Second Comptroller, where the contract was found on file; a copy thereof is herewith enclosed. I also addressed a letter to Captain, now Major, Swords on the subject; his reply will be found with the papers herewith transmitted.

These papers contain all the information pertaining to the facts in the case in possession of this office.

I have the honor to be, most respectfully, your obedient servant,
PETER HAGNER, *Auditor.*

HON. ROBERT C. WINTHROP,
Speaker of the House of Representatives.

*To the honorable the Senate and House of Representatives of the
United States:*

The undersigned respectfully refers your honorable bodies to the enclosed affidavits of Colonel John Boulwar, Andrew Baker, esq., and himself, and prays an act of Congress for his relief, in accordance with the facts therein disclosed.

THOMAS H. NOBLE.

In the case of Thomas H. Noble, who asks for compensation for charcoal furnished the United States, the petitioner alleges that he had entered into a contract and given bond, with approved security, to furnish 3,000 bushels of charcoal, at fourteen and a half cents per bushel, and had delivered a large portion of said coal, when he was called out as a militiaman, to march with his regiment against the Mormons. Supposing that he would return in time to deliver the residue of the coal, which was already burned, by the time it should be needed, he went with his regiment. On his return he found that the time within which his contract was to have been complied with had expired, and that the United States quartermaster with whom

he had contracted had closed his contract on him, and refused to pay him for the coal already delivered, or to take off that which he had burned. The coal was, by agreement, to be burned on the land reserved to the United States. The fact of his having marched with his regiment is proved by John Boulwar, one of the sureties on his bond, and the attestation affixed to his deposition is without any seal of the county court, shewing the official character of the person who signs his name as a justice of the peace.

The affidavits of Boulwar, and claimant's own affidavit, sets forth that 1,900 bushels of the coal had been delivered, which the quartermaster refused to pay for, and would not permit him to remove from the public lands, &c.

STATE OF MISSOURI, }
 Clinton County, } ss.

I, Thomas H. Noble, make oath and state that, in the year 1838, I entered into a contract with Captain Thomas Swords, then acting quartermaster of the United States, at Fort Leavenworth, for the burning and delivery of 3,000 bushels of charcoal, at fourteen and a half cents per bushel; the said coal to be made on the then military reserve near the said fort; and that I executed bond accordingly, with Daniel D. Moore and John Boulwar as securities. Pursuant to said contract, 1,963 bushels of said coal was delivered and received by the said quartermaster; and I had another large pit burnt, amply sufficient to have filled the residue of said contract, and ready for delivery, when I was mustered into the service of the State, in Colonel John Boulwar's regiment of militia, to march against the Mormons. At that time I believed, and yet believe, there was no probable want of the remaining portion of said coal before I could return from the public service, into which I was summoned. On returning home, however, and proceeding to the fort for the purpose of delivering the remaining portion of said coal, I was informed by Captain Swords that he had closed the contract upon me, would pay me nothing for what I had delivered, and forbid my taking off or touching the remaining portion of the coal I had burnt upon the reserve as aforesaid. The contract with the quartermaster aforesaid, together with all the rest of my papers and property, was subsequently consumed in the burning of my house.

THOMAS H. NOBLE.

Sworn to and subscribed, before the undersigned, clerk of the county court for Clinton county, Missouri, on the 11th day of November, 1846.

WINSLOW TURNER, *Clerk.*

STATE OF MISSOURI, }
County of Platte. } ss.

Before the undersigned, a justice of the peace within and for the county aforesaid, personally appeared this day John Boulwar, who upon his oath deposeth and saith: that, during the year 1838, Thomas H. Noble was contractor with the government of the United States for the delivery of 3,000 bushels of charcoal, to be delivered at Fort Leavenworth, which said contract was made with Captain Thomas Swords, then the acting quartermaster at said post. Said Noble executed his bond to government, with David D. Moore and affiant as securities; that affiant knows that eighteen or nineteen hundred bushels of said coal were delivered. Said Noble, after the delivery as aforesaid, burnt or made another large coal-pit; and because the coal was not promptly delivered, the quartermaster closed the contract and would receive no more coal, and subsequently took the coal left by said Noble in the pit, as aforesaid, and appropriated it to the use of the government, and would not pay Noble anything for his labor; the contract price of said charcoal was fourteen and a half cents per bushel. Deponent believes that the amount of coal contracted for was received and used at the post aforesaid. Deponent and said Moore, as securities, were never called on for any forfeiture on the bond, as aforesaid.

JOHN BOULWAR.

Sworn to and subscribed before me, at Platte county, aforesaid, this 30th day of October, A. D. 1846.

WM. B. BARNETT, J. P.

STATE OF MISSOURI, }
County of Platte. } ss.

Before the undersigned, a justice of the peace within and for the county aforesaid, personally appeared this day Andrew Baker, who, being duly sworn upon his oath, deposeth and saith: that, in year 1838, Thomas H. Noble had contracted with the government of the United States for the delivery of 3,000 bushels of charcoal at fourteen and a half cents per bushel, to be delivered at Fort Leavenworth; the bond for the performance of which was executed to the government by Captain Thomas Swords, then acting quartermaster at said post. Deponent, then in the employment of said Noble, hauled and delivered to the quartermaster, aforesaid, 1,963 bushels of said charcoal; that said Noble could not quite comply with the terms of his contract, and because the time of delivery had expired the contract was closed by the quartermaster aforesaid. Said Noble had, at the time of closing aforesaid, another large pit of coal burned; the quartermaster would not receive it, and would not pay him anything, and subsequently took the pit burnt, as aforesaid, and

applied it to the use of government at said post. Deponent further states, that the pit of coal, as aforesaid, would have been amply sufficient to have filled the said contract.

ANDREW BAKER.

Sworn to and subscribed before me, at Platte county, aforesaid, this 30th day of October, A. D. 1846.

WM. B. BARNETT, J. P.

STATE OF MISSOURI, }
County of Platte. } ss.

Before the undersigned, a justice of the peace, within and for the county aforesaid, personally came John Boulwar, who, upon his oath deposeth and saith: that, during the year 1838, the affiant was acting colonel of the Missouri militia, duly commissioned by the governor of this State, and that affiant and his regiment, by General A. W. Doniphan, under the call of the governor, was called to march against the Mormons, some time in the fall of 1838; and that Thomas H. Noble was one of his regiment, and marched as aforesaid.

JOHN BOULWAR.

Sworn to and subscribed before me, at Platte county, aforesaid, this 30th day of October, A. D. 1846.

WM. B. BARNETT, J. P.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, April 27, 1847.

SIR: I have received your letter of the 7th instant. On examining the records of this office, it is found that Captain Thomas Swords entered into a contract on the 8th of July, 1838, at Fort Leavenworth, with Thomas H. Noble, for the delivery of three thousand bushels of charcoal, at 14 cents per bushel. This contract was sent to the Second Comptroller on the 3d of September, 1838. How far the contract was complied with by Mr. Noble, does not appear to have been reported by Captain Swords.

I am, sir, very respectfully, your most obedient servant,

HENRY STANTON,

Assistant Quartermaster General.

PETER HAGNER, Esq.,

Third Auditor Treasury, Department.

Articles of agreement entered into at Fort Leavenworth, this eighth day of July, in the year of our Lord one thousand eight hundred and thirty-eight, by and between Captain Thomas Swords, assistant quartermaster United States army, for and on behalf of the United States of America of the one part, and Thomas H. Noble, of Platte district, Clay county, State of Missouri, of the other part, witnesseth:

1. That the aforesaid Thomas H. Noble hereby covenants and agrees, and by these presents binds himself, his heirs, and assigns, to deliver to the United States, aforesaid, three thousand bushels of good well burnt charcoal, at such point within the limits of Fort Leavenworth as may be designated by the assistant quartermaster—the whole to be delivered on or before the thirtieth of September, one thousand eight hundred and thirty-eight.

2. That the aforesaid Captain Thomas Swords, for and on behalf of the United States of America, binds himself and his successors in office to pay to the abovementioned Thomas H. Noble, his heirs or assigns, the sum of fourteen cents for each and every bushel of coal delivered in pursuance of this contract. Payment to be made as soon as the whole quantity shall have been delivered.

In testimony whereof, the two contracting parties have hereunto affixed their hands and seals the day and date before written.

THOMAS SWORDS, [SEAL.]

Assistant Acting Quartermaster.

Test:

W. H. HILDRETH,
THOS. W. HIGGINS.

THOMAS H. NOBLE, [SEAL.]

DAVID M. ENGLISH.

Know all men by these presents:

That we, Thomas H. Noble, John Boulwar, and David D. Moore, of Clay county, Missouri, are held and firmly bound unto the United States of America in the sum of three hundred dollars, of good and lawful money of the United States, for which payment to be well and truly made, we bind ourselves, and each of us, by himself, for, and in the whole jointly and severally, firmly by these presents.

Dated this eighth day of July, in the year of our Lord one thousand eight hundred and thirty eight.

The conditions of this obligation is such, that if the above bounden Thomas H. Noble, his heirs and assigns, shall well and truly observe, perform and keep, all and singular the covenants comprised or mentioned in the foregoing articles of agreement or contract, bearing date this eighth day of July, one thousand eight hundred and thirty-eight, according to the true intent and meaning

of the same, then this obligation shall be void, otherwise to remain in full force and virtue.

THOMAS H. NOBLE, [SEAL,]
JOHN BOULWAR, [SEAL,]
DAVID D. MOORE, [SEAL.]

Signed, sealed, and delivered, in the presence of—

DAVID M. ENGLISH,
W. H. HILDRETH.

WASHINGTON CITY, *October 21, 1847.*

SIR: Since my arrival in this city, I have received your letter of 29th April last, addressed to me at Monterey, Mexico, calling for information in regard to a contract made by me with Thomas H. Noble, in the fall of 1836, for the delivery of charcoal at Fort Leavenworth.

As I have none of my public papers of that time now with me, to which to refer, all the information I can give is only such as is impressed upon my memory.

I perfectly recollect having made the contract alluded to, and that it was not complied with in full; what portion was delivered I do not remember. Mr. Noble abandoned the job, having, as I understood, gone out against the Mormons, then in Missouri, in compliance with a call of the governor.

His not having complied with his contract, as to the quantity stipulated to be delivered, was, of course, sufficient cause for me to refuse payment for what he actually delivered. I have no recollection of having used what he had burned and not delivered; but, on the contrary, think some, if not the whole of it, was taken across the river by citizens, with his authority.

Your letter of yesterday's date was received a few minutes since.

Very respectfully, your obedient servant,

THO. SWORDS,
Quartermaster.

PETER HAGNER, Esq.,
Third Auditor, United States Treasury.

The charcoal received of Thomas H. Noble, on his contract, if any, was used in the public blacksmith's shop for public purposes. It was not taken up on my returns, in consequence of no payment having been made, the contract not having been complied with.

THO. SWORDS,
Quartermaster.

Memoranda.—Thomas H. Noble.

From the accounts of Captain Swords: Purchase and issue of charcoal at Fort Leavenworth.

Paid to Thomas W. Higgins, June 20, 1836:

	Bushels.
For	3,029
Issued 2d quarter, 1836	229
	<hr/>
Issued 3d quarter, 1836	2,800
	300
	<hr/>
Issued 4th quarter, 1836	2,500
	600
	<hr/>
Issued 1st quarter, 1837	1,900
	900
	<hr/>
Issued 2d quarter, 1837	1,000
	950
	<hr/>
	50

Paid to J. B. Wills, September 30, 1837

For	3,470 $\frac{1}{2}$
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Issued 3d quarter, 1837	3,525 $\frac{1}{2}$
	520 $\frac{1}{2}$
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Issued 4th quarter, 1837	3,000
	500
	<hr/>
	2,500
	<hr/>

Turned over to Lieutenant R. A. Terrett, December 10, 1847	2,500
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Lieutenant Terrett takes up his returns for the 4th quarter of 1837—the above	2,500
Issued in 4th quarter, 1837, and 1st quarter of 1838	2,000

Issued 2d quarter, 1838	50
Turned over to Captain Swords, 2d quarter, 1838	450
	<hr/>
	500
	<hr/>

Lieutenant Terrett made no purchase of charcoal.

Captain Swords takes up, on his returns for the 2d quarter of 1838, the above.....	450
And accounts for the issue thereof.....	450

In the accounts of Captain Swords, subsequent to the 2d quarter of 1838, there is no evidence of the purchase, receipt, or issue of charcoal, or memorandum of the manner, or from whence the article (if any was received or used at the post) had been procured. None is borne on his quarterly returns to the end of 1839.

The quartermaster general written to 7th April, 1837, for information as to a contract, or statement of the transaction given to him by Captain Swords.

Answer, received 27th April, refers to Second Comptroller for the contract. "How far the contract was complied with, not found to have been reported by Captain Swords."

The contract was obtained from the files of the Second Comptroller, and a copy taken 27th April, 1847. Same day addressed a letter to Captain Swords, informing him of the resolution of the 1st March, 1847, and requesting information from him in regard to the circumstances which induced a refusal to pay for the charcoal alleged to have been delivered, and to cancel the contract. The letter was addressed to Captain Swords, in Upper California.

Captain, now Major, Swords called at this office a few days past; said he had received, here, the letter addressed to him on the 27th April; stated he had transmitted to the quartermaster general a statement in relation to the contract some time past, but which could not be found at his office; requested a search to be made for it in this office. The search was made, but no statement found.—October 20, 1848.

He was informed thereof, and requested to reply to the matter contained in the letter from this office to him of April 27, 1847.

His reply was received on the 23d October, 1837.

